

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

Clement David King,

Case No. 21-cv-1191 (DSD/TNL)

Plaintiff,

v.

REPORT AND RECOMMENDATION

Merrick B. Garland, U.S.A.G.; Michael Carvajal, Dir. Of Bur. of Prisons; S. Kallis, Warden, FMC Rochester; Chad Orum, Work Cadre Unit Manager, FMC Rochester; Dr. M. Klein, Chief of Psychology, FMC Rochester; Dr. Lucas, psychologist, FMC Rochester; J. Nerstad, Former Correctional Systems Specialist, FMC Rochester; and Lt. Gilbertson, Property Lieutenant, FMC Rochester,

Defendants.

In an order dated June 16, 2021, this Court ordered plaintiff Clement David King to pay an initial partial filing fee of \$67.76 in this matter. *See* ECF No. 8 (citing 28 U.S.C. § 1915(b)). King was given 20 days to submit the required initial partial filing fee, failing which it would be recommended that this action be dismissed without prejudice for failure to prosecute. *See id.* (citing Fed. R. Civ. P. 41(b)).

That deadline has now passed, and King has not yet paid the required initial partial filing fee in this matter. Accordingly, this Court now recommends, in accordance with its prior order, that this action be dismissed without prejudice under Rule 41(b) for failure to prosecute. *See Henderson v. Renaissance Grand Hotel*, 267 F. App'x 496, 497 (8th Cir. 2008) (per curiam) (“A district court has discretion to dismiss an action under Rule 41(b)

for a plaintiff's failure to prosecute, or to comply with the Federal Rules of Civil Procedure or any court order.").

RECOMMENDATION

Based upon the foregoing, and on all of the files, records, and proceedings herein,
IT IS HEREBY RECOMMENDED that this action be **DISMISSED WITHOUT PREJUDICE** under Fed. R. Civ. P. 41(b) for failure to prosecute.

Date: August 5, 2021

s/ Tony N. Leung
Tony N. Leung
United States Magistrate Judge
District of Minnesota

King v. Garland et al.
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NOTICE

Filing Objections: This Report and Recommendation is not an order or judgment of the District Court and is therefore not appealable directly to the Eighth Circuit Court of Appeals.

Under Local Rule 72.2(b)(1), "a party may file and serve specific written objections to a magistrate judge's proposed finding and recommendations within 14 days after being served a copy" of the Report and Recommendation. A party may respond to those objections within 14 days after being served a copy of the objections. *See* Local Rule 72.2(b)(2). All objections and responses must comply with the word or line limits set forth in Local Rule 72.2(c).